In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1714

BARDAHL MANUFACTURING CORPORATION, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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1. Petitioners seek to bar the enforcement of an internal revenue summons issued upon Arthur Andersen and Company, a public accounting firm, in connection with an investigation of their tax liabilities for the years 1966 through 1971. The summons called for the production of records belonging to Arthur Andersen and Company, which pertained to Bardahl International Oil Corporation, S.p.A., an Italian corporation (R. 8).[1]

In the district court proceeding brought by the government to enforce the summons, Arthur Andersen and Company represented that it was willing to comply with the summons as soon as ordered to do so (R. 17-18). The

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[1] "R." references are to the duplicated Record on Appeal.

district court denied petitioners' attempt to intervene in the summons enforcement proceeding (Pet. App. B) and the court of appeals affirmed (Pet. App. A).

2. In *Reisman* v. *Caplin*, 375 U.S. 440, this Court noted that a proposed witness or any interested party may attack an internal revenue summons before the hearing officer, as well as before the district court in any ensuing enforcement proceeding. However, the Court pointed out that the district court might allow such intervention upon a showing that "the material is sought for the improper purpose of obtaining evidence for use in a criminal prosecution" or where "it is protected by the attorney-client privilege" (375 U.S. at 449). But as the Court subsequently made clear in *Donaldson* v. *United States*, 400 U.S. 517, 530, *Reisman* does not mean that "a taxpayer may intervene [in a summons enforcement proceeding] as of right simply because it is his tax liability that is the subject of the summons." The Court in *Donaldson* held that the taxpayer did not have a significantly protectable interest (entitling him to intervene) in summoned records belonging to his former employer and its accountant relating to the taxpayer's compensation during the years under investigation.

Petitioners urge (Pet. 5) that they have a "confidential relationship" with Arthur Andersen and Company which makes this case distinguishable from *Donaldson* v. *United States*, 400 U.S. 517, upon which both courts below relied. But the only relationship which appears from the record is between Arthur Andersen and Company and Bardahl International Oil Corporation, S.p.A., an Italian corporation. That entity does not have any obligation to petitioners with respect to the records sought which could form the basis of a priv-

ilege. At all events, even if Arthur Andersen is deemed to be petitioners' accountant, there is no accountant-client privilege recognized in the federal courts. See *Couch* v. *United States*, 409 U.S. 322, 335, and cases there cited.[2]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

SEPTEMBER 1974.

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[2]Moreover, even if after production of the items sought, any court should rule that petitioners did have a protectable interest, by way of privilege or otherwise, petitioners may assert that interest in any subsequent trial. See *Donaldson* v. *United States, supra*, 400 U.S. at 531.

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